ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Price Cap Performance Review for Local Exchange Carriers	)	CC Docket No. 94-1
	)	
Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers	)	CCB/CPD File No. 98-63
	)	
Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA	)	CC Docket No. 98-157

COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits its comments in response to the *Further Notice* in the above-referenced proceeding.[1] Cox's comments are limited to the portion of the *Further Notice* that addresses the appropriate regulatory treatment of exchange access services provided by competitive local exchange carriers ("CLECs").[2] As described below, the Commission should not impose any additional regulatory requirements on CLEC access charges because the marketplace will constrain the prices CLECs can charge and because excessive charges will subject CLECs to the Commission's complaint process. To

[1] Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Interexchange Carrier Purchases of Switched Access Services Offered by Competitive Local Exchange Carriers, Petition of U S West Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA, *Fifth Report and Order and Further Notice of Proposed Rulemaking*, FCC 99-206, CC Docket No. 96-262, CC Docket No. 94-1, CCB/CPD File No. 98-63, CC Docket No. 98-157 (rel. Aug. 27, 1999) (the *"Further Notice"*).

[2] *Id.*, ¶¶ 236-257.

reinforce marketplace constraints, the Commission should adopt a presumption that a CLEC's terminating access charges are lawful if they do not exceed that CLEC's originating access charges. As the *Further Notice* suggests, this presumption will create significant incentives for CLECs to avoid pricing terminating access above the level of originating access.

I. Introduction

Cox is one of the leading providers of facilities-based CLEC service in the country. Cox, through subsidiaries, is certificated in thirteen states across the country and currently provides more than 130,000 access lines to customers in seven states via Cox's own facilities, including loops. Like all local exchange carriers, Cox recovers its costs through a combination of charges to end users and charges to other carriers, including access charges. As is the case for incumbent local exchange carriers ("ILECs"), access charges constitute a portion of Cox's revenue base. Thus, Cox has an interest in this proceeding.

As the *Further Notice* suggests, Cox's access charges are subject to market discipline in ways that ILEC access charges are not.[3] In addition, CLEC access charges are subject to the overarching requirements of the Communications Act and the Commission's complaint process. Therefore, Cox submits that the Commission should not adopt significant pricing restrictions on CLEC access charges. The Commission should, however, adopt a presumption that a CLEC terminating access charges are reasonable if they are no greater than that CLEC's originating access charges. This presumption will give CLECs appropriate incentives and reinforce the effects of market forces on CLEC access rates.

[3] *See id.*, ¶ 237. In particular, CLECs lack the broad base of end user subscribers that ILECs enjoy, and thus have relatively little leverage relative to interexchange carriers.

II. The Commission Need Not Adopt New Rules Governing CLEC Access Charges.

The *Further Notice* seeks comment on whether marketplace forces will be sufficient to ensure that CLEC access charges are not unreasonable.[4] As shown below, market forces should be sufficient to restrain CLEC access charges. Moreover, the Commission's existing complaint process provides a backstop that is available to interexchange carriers if a CLEC attempts to price access service at an unreasonable level. Consequently, there is no need for additional Commission rules.

First, market forces should be more than adequate to the task of ensuring that CLECs maintain access charges at reasonable levels. Independent CLECs face stiff competition, not only from ILECs but also from other CLECs, including CLECs affiliated with interexchange carriers. Independent CLECs also are relatively small companies, especially when compared with the largest long distance companies, and have significant bargaining disadvantages when compared to the larger interexchange carriers.

The most significant advantage for interexchange carriers is that they do not have to depend on CLECs. If a CLEC seeks excessive access charges, an interexchange carrier has several options. For a large customer, the interexchange carrier can obtain dedicated facilities to carry the customer's traffic, thereby depriving the CLEC of any access revenue from that customer.[5] As described in the *Further Notice,* the interexchange carrier also can threaten to refuse to accept calls that traverse the CLEC's network.[6] This is a particularly effective tactic

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[4] *Id.*, ¶ 239-40.

[5] Of course, these facilities can be obtained from any provider, including the ILEC.

[6] As described in the *Further Notice,* there are important reasons why interexchange carriers should not be permitted to refuse to connect to CLEC customers. *Id.*, ¶¶ 241-3. Nevertheless, even the threat of cutting off a CLEC's customers from interexchange service has a significant effect on the CLEC.

when a CLEC seeks to obtain the business of a large customer that already has an established relationship with the interexchange carrier.[7] Because there are other CLECs that could serve any given customer, an interexchange carrier's refusal to deal with a CLEC could have a devastating effect on the CLEC's ability to get customers and is, therefore, a very effective bargaining tool. Given that the largest interexchange carriers also have affiliated CLECs, an independent CLEC that offers access at excessive rates may be at particular risk for competition from these interexchange carrier-affiliated competitors.

In Cox's experience, interexchange carriers do not hesitate to employ these tactics when they believe that a CLEC's access charges are excessive. Indeed, interexchange carriers have every incentive to seek the lowest possible access charges, and they exert constant pressure for lower access charges. Thus, market forces are likely to ensure that CLEC access charges remain reasonable.

It is possible, however, that some CLECs will attempt to obtain excessive rates for their access services. In such cases, some Commission involvement may be necessary. However, interexchange carriers already have a mechanism for seeking redress in the form of the Commission's complaint process.

The complaint process is ideally suited for addressing CLEC access overcharges for several reasons. First, the complaint process allows for the type of individual adjudication that is useful in the beginning stages of the development of local telephone competition. Even more so

[7] It does not matter whether an interexchange carrier actually can or will carry out the threat, because the risk to the CLEC is so great. This is especially true if the carrier tells the end user that it will not serve customers of a particular CLEC.

than ILECs, no two CLECs are alike, and the complaint process allows for variability in costs, cost recovery mechanisms and other circumstances. Using the complaint process also reduces the likelihood that the Commission will be required to consider marginal cases because of the uncertainty and costs of litigation.

Finally, using the complaint process will allow the Commission to build a useful factual record to demonstrate whether, over time, there are specific concerns that should be addressed through the Commission's rules. In the absence of that experience to date, the Commission has no more than a few anecdotal (and unsubstantiated) examples of supposed overcharges and, therefore, has no basis for adopting rules that would bind all CLECs at this time. The Commission, therefore, should not adopt CLEC access charge rules.

III. The Commission Should Adopt a Presumption Concerning Terminating Access Rates.

The *Further Notice* suggests that there may be concerns regarding CLEC access charges that are specific to terminating access rates because terminating access may not be subject to the same marketplace forces as originating access.[8] For the reasons described above, it is unlikely that CLECs will be able to sustain excessive rates for either originating or terminating access.[9] Nevertheless, the Commission should, as suggested by the *Further Notice,* adopt the

[8] *See id.*, ¶ 247.

[9] *See supra* Section II. While it is true that some strategies, such as bypass, are somewhat more difficult for interexchange carriers with regard to terminating access in many cases, they still are available. In particular, a refusal to terminate calls to the customers of a CLEC would have a devastating effect on the CLEC's business – very few customers would be interested in a CLEC's service if they could not receive long distance calls placed via AT&T, MCI Worldcom or Sprint. The impact of not being able to receive long distance calls because an interexchange carrier refuses to terminate calls to the CLEC easily could be as serious as not being able to receive local calls because an ILEC refuses to provide interconnection.

presumption that any CLEC terminating access rate that does not exceed the carrier's originating access rate is reasonable.[10]

The presumption would operate in a straightforward fashion and would apply if the CLEC shows that its terminating access rates are less than or equal to its originating access rates.[11] This presumption would apply in any proceeding to determine the reasonableness of a CLEC's access charges and would shift the burden of proof of unreasonableness to the complaining party. It should not, however, apply when the CLEC's originating access rates are found to be unreasonable.

A presumption of reasonableness would serve several important purposes. First, to the extent terminating access poses a greater risk of excessive charges, the presumption would create specific incentives for CLECs to limit their terminating access charges. Because limiting terminating access charges would create an effective defense against complaints by interexchange carriers, there could be significant benefits to setting terminating access rates equal to or lower than originating access rates.

Second, adopting the presumption would encourage CLECs to recover their access costs equally between terminating and originating access. Because the costs of providing originating and terminating access service are likely to be identical (or nearly so), equal pricing typically is economically efficient and avoids market distortions. In particular, equal pricing will ensure that interexchange carriers and end users make economically efficient decisions when determining whether to obtain or construct bypass facilities.

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[10] *Further Notice*, ¶ 253.

[11] Any calculation would, of course, include all charges assessed to interexchange carriers for originating and terminating access, not just those specifically labeled as "access charges."

Third, adopting a presumption of reasonableness rather than a price cap or other requirement regarding terminating access pricing maintains the flexibility that CLECs need to operate in a competitive environment.[12] Specific circumstances or traffic patterns may require terminating access rates that are higher than originating access rates, and so the Commission should not preclude CLECs from charging, and demonstrating the reasonableness of, higher terminating rates.

Finally, the presumption will conserve administrative resources by reducing the number and scope of disputes between CLECs and interexchange carriers. The presumption will effectively eliminate one area of disagreement regarding access charges and will allow complaint proceedings to focus on whether the overall charges are reasonable. It also is likely that many CLECs, given the opportunity to take advantage of this presumption, will adjust their access rates accordingly, reducing the number of disputes the Commission may have to address. Thus, adopting a presumption that CLEC terminating access rates are reasonable if they are equal to or lower than the corresponding originating access rates will benefit CLECs, interexchange carriers and the Commission.

[12] *See* Cox Comments on AT&T Petition, filed Dec. 7, 1998, at 3-4 (describing reasons why CLEC access costs may be greater than those of ILECs). The *Further Notice* acknowledges that CLECs may have different cost structures than ILECs. *Further Notice*, ¶ 244.

IV. Conclusion

For all these reasons, Cox Communications, Inc., respectfully requests that the Commission act in accordance with these comments.

Respectfully submitted,

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October 29, 1999

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, hereby certify that on this 29th day of October, 1999, I caused copies of foregoing Comments of Cox Communications, Inc. to be served upon the parties listed below via regular mail:

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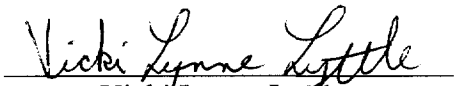

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* Denotes hand delivery.